



# NYAYA DEEP

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## ***Role of Teachers in a Democratic Society vis-à-vis Right to Education : A Study***

1. Art 21 of the Constitution of India guarantees to all the 'right to life' which includes all those rights which are basic to the dignified enjoyment of life and the dignity of the individual can be ensured only when it is accompanied by the right to education.<sup>1</sup> In other words, the court declared that the right to education directly flows from right to life.<sup>2</sup> The right to education is not an absolute right as the contents and parameters need to be determined in the light of Articles 41 and 45 of the directive Principles of State Policy.<sup>3</sup> This position of law became certain with the Constitutional Amendment specifically providing right to education as a distinct fundamental right.<sup>4</sup> This constitutional provision states thus:

**"The State shall provide free and compulsory education to all children of the age of (6) to (14) in such manner as the State may, by law, determine"<sup>5</sup>**

Emphasizing the need for the right to education, Chief Justice of US Supreme Court observed: "In these days, it is doubtful any child may reasonably be expected to succeed in life, if he is denied the opportunity of an education".<sup>6</sup> Art 21A now imposes a constitutional duty on the part of the State to provide schools, infrastructure, trained teachers, curriculum and teaching-learning material including midday meal facilities.<sup>7</sup> However, the courts are cautious

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<sup>1</sup> Mohini Jain Vs. State of Karnataka, AIR 1992 SC P.1858.

<sup>2</sup> Ibid. See also Prof. Narender Kumar "Constitutional Law of India" Allahabad Law Agency 2012 P.318 (8<sup>th</sup> Edition reprint).

<sup>3</sup> Unni Krishnan Vs. State of AP AIR 1993 SC P2178.

<sup>4</sup> For details refer to Constitution (86<sup>th</sup> Amendment) Act, 2002 incorporating Art 21-A of the Constitution.

<sup>5</sup> Ibid.

<sup>6</sup> See the observations of Chief Justice Earl Warren in Brown Vs. Board of Education, 347 US 483 (1954).

<sup>7</sup> See for details Shikshan Prasarak Mandal, Pune Vs. State of Maharashtra AIR 2010 Bom. P.39.



in the abuse of the right guaranteed when it ruled that managements of unrecognized schools cannot claim this right to protect their private interests and to run the schools unauthorisedly.<sup>8</sup> Educational opportunities to children for their promotion and welfare, is now an indispensable mandate which the State has to discharge the obligation to give effect to Art. 21-A.<sup>9</sup>

2. Art. 41 of the Directive Principles of State Policy provides that the 'State shall within the limits of its economic capacity and development, make effective provision for securing the right to education.....' Art 45 of the Directive Principles of State Policy provides that "the State shall endeavour to provide within a period of 10 years from the commencement of the Constitution, free and compulsory education for all children until they complete the age of 14 years". This Directive has now been transformed into a fundamental right<sup>10</sup> which is not necessarily confined to primary education but includes all stages of education upto the age of 14 years<sup>11</sup>. The duty of the State to provide education is a sine-qua-non for an intelligent understanding of various issues relating to the rights of citizens and in particular the understanding of social and political problems confronting the society which would ultimately help democracy in their choice to vote and determine the Govt., they would like to have. In other words, right to education is an intrinsic part of democracy itself and without it, democracy bears no sense.
3. Teachers have a vital role to play in promoting the right to education one of the prime requisite relates to appointment of teachers who are eligible and competent. Dealing with the appointment of teachers without possessing the eligibility the Supreme Court observed: "that if the appointment order itself is bad in its inception, it cannot be ratified and a person lacking eligibility cannot be

<sup>8</sup> Shafeek S, Manager Vs. state of Kerala AIR 2009 (NOC) 2336 (Kerala).

<sup>9</sup> See for details Bharatiya Seva Samaj Trust Tr Pres & another Vs. Yogeshbhai Ambalal Patel & another, AIR 2012 SC P.3285 hereinafter referred to BSS Trust Case.

<sup>10</sup> See Art 21A of the Fundamental Right.

<sup>11</sup> Supra Unni Krishnan P.2178



- ii) State's obligation must be to provide educational facilities at all levels to its citizens; and
  - iii) The educational institutions should function to the best advantage of the citizens and the opportunity to acquire education should not be confined to richer sections of the society.
6. As observed by the Supreme Court in BSS Trust Case,<sup>16</sup> the concept of education has been elucidated thus:-
- i) Education does not mean only learning but includes the opportunities to get more information through means to acquire knowledge and wisdom, so that he may lead a better life and better citizen to serve the nation in the better way;
  - ii) Educational policy in India is based on the following belief:-
    - a) that the values of equality, social justice and democracy and the creation of a just and humane society which can be achieved only through provisions of elementary education to all;
    - b) provision of free and compulsory education of satisfactory quality to children for disadvantaged and weaker sections of society is not merely the responsibility of schools run or supported by appropriate Govt., but also of schools which are not dependent on Govt., funds.
  - iii) Every generation looks up to the next generation with the hope that they shall build up a nation better than the present. Education which empowers the future generation should always be the main concern for any nation;
  - iv) Without education, a citizen can never come to know of his other rights;
  - v) It is a well-accepted fact that democracy cannot be flawless but can strive to minimise these flows with proper education; and
  - vi) Democracy depends for its very life on a high standard of general, vocational and professional education.

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<sup>16</sup> Supra Note 9.



7. Implementation of Art 21A is absolutely mandatory as without it, the other fundamental rights are rendered meaningless.<sup>17</sup>
8. In Tamil Nadu's case,<sup>18</sup> the apex court stated:-
  - i) Education is the most important and effective means to create an egalitarian society;
  - ii) Earnest effort being made to bring education out of commercialism;
  - iii) Right of the child should be extended to quality education without any discrimination on economic, social and cultural grounds; and
  - iv) Basic education should be qualitative and trained and eligible teachers as per norms fixed by the legislature should be strictly adhered to.
9. In conclusion, the following suggestions are made:-
  - i) the guidelines given by the apex court in BSS Trust Case<sup>19</sup> may be required to be followed strictly by all administrators and educators for the very survival of democracy in the Country;
  - ii) the guidelines laid down in Andhra Kesari Education Society's case<sup>20</sup> is also required to be strictly adhered to;
  - iii) eligibility criteria for appointment of teachers as laid down by the legislature should not be departed from. This criteria need periodic review by Educational experts;
  - iv) Art 21A be further amended to provide for higher education including professional education within the limits to be prescribed by law;
  - v) Right to education must not merely relate to learning but to acquire knowledge for which all necessary facilities and infra-structure should be provided for;

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<sup>17</sup> Ashok Kumar Takur Vs. Union of India 2008 AIR SCW P.2899.

<sup>18</sup> State of Tamil Nadu Vs. K.Shyam Sunder AIR 2011 SC P.3470.

<sup>19</sup> Supra Para 18.

<sup>20</sup> Supra Note 14.



- vi) The guidelines framed by the courts must be statutorily incorporated in the rules to be framed and to be made compulsorily observable by all educational authorities;
- vii) Continued efforts must be made wherever necessary, to free the educational system to be kept out of commercialism; and
- viii) Proper education is necessary for the very survival of democracy, as otherwise flaws in the democratic system may become irremovable causing irreparable damage to our democratic basic structure of our Constitution.

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